Jed W. Manwaring EVANS, KEANE LLP 1101 W. River Street, Suite 200 P. O. Box 959 Boise, Idaho 83701-0959 Telephone: (208) 384-1800 Facsimile: (208) 345-3514

U.S. COUNTS 971/24 29 PM 3: 53

Attorneys for Trustee, Bernie R. Rakozy

UNITED STATES BANKRUPTCY COURT DISTRICT OF IDAHO

In Re:	
AUTOMATED STRUCTURES, II 82-0492850	NC.,

Debtor.

Case No. 96-03201

MOTION FOR APPROVAL OF COMPROMISE

Pursuant to Bankruptcy Rule 9019, the Trustee moves the court for approval of a compromise between the above bankruptcy estate and Dougal Construction Company ("Dougal") whereby Dougal shall pay \$4,500.00 to the estate in full satisfaction of an account receivable in the amount of \$8,201.97. The compromise reflects that Dougal will likely be entitled to a setoff in the principal amount of \$3,114.71 plus interest, costs, and attorney fees as a result of a lien filed by Franklin Building Supply. In support of the motion the Trustee alleges as follows:

The Debtor filed a Chapter 7 Petition on or about December 13, 1996. The filing 1. was one week after the Chapter 7 bankruptcy petition of Monterey Homes, Inc., a related corporation.

- 2. At the time of filing the bankruptcy, the Debtor's record showed an account receivable in the amount of \$8,201.97 due from Dougal arising out of the construction of a home located on Lot 25, Block 5, Silverwood Subdivision No. 3, Ada County, Idaho. (Exhibit A attached.) Dougal was the general contractor on that house and the Debtor was a subcontractor. The Debtor provided prefabricated wall units and installation labor used in the construction of the home. The Debtor provided materials purchased from Franklin Building Supply, the charges for which were included in the gross billing and account due from Dougal. (Affidavit of Jerry Smith.) Franklin Building Supply has filed a materialman's notice of claim of lien recorded in Ada County against Lot 25, Block 5, Silverwood Subdivision No. 3 in the amount of \$3,114.71. (Exhibit B. Attached.)
- 3. Franklin Building Supply billed the materials to Monterey Homes, Inc. rather than the Debtor ASI because ASI did not have an account with Franklin and Monterey Homes was a closely related corporation. Nevertheless the goods sold and used in Lot 25, Block 5, Silverwood Subdivision No. 3, by Franklin Building Supply, were the same materials used by the Debtor and included in the billing to Dougal. (Affidavit of Jerry Young.) Based upon that evidence, the Trustee believes that Dougal would be entitled to setoff, pursuant to 11 U.S.C. § 553(a) for the lien now encumbering the property by Franklin Building Supply in the amount of \$3,114.73, plus interest, costs and attorney fees.
- 4. The Trustee has agreed, subject to court approval, to accept \$4,500.00 from Dougal Construction in full satisfaction of the account receivable of \$8,201.97. The discount of \$3,702.00 reflects the setoff of the Franklin Building Supply lien in the amount of \$3,114.71 plus interest, costs and attorney fees, which may be claimed by Franklin Building Supply.

5. The Trustee submits that the proposed compromise is in the best interest of the estate and creditors. It is not likely that the Trustee could recover substantially more than the proposed compromise if the claim were litigated. The Trustee recommends that the court approve the compromise which would save the estate additional costs and expenses of litigation.

Dated this $\frac{29}{100}$ day of May, 1997.

EVANS, KEANE LLP

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Jed W. Manwaring, Of the Fir

Attorneys for Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27 day of May, 1997, a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, and addressed to; by fax transmission to; by overnight delivery to; or by personally delivering to or leaving with a person in charge of the office as indicated below:

Automated Structures, Inc. 5903 E. Powerline Road Nampa, ID 83687	[] U.S. Mail [] FAX [] Overnight Delivery [] Hand Delivery
Harold Q. Noack, Jr. Attorney at Law 733 N. 7th St. P.O. Box 875 Boise, ID 83701	[] U.S. Mail [] FAX [] Overnight Delivery [] Hand Delivery
Bernie R. Rakozy, Trustee P. O. Box 1738 Boise, ID 83701	[] U.S. Mail [] FAX [] Overnight Delivery [] Hand Delivery
U.S. Trustee P. O. Box 110 Boise, ID 83701	[] U.S. Mail [] FAX [] Overnight Delivery [] Hand Delivery
Dougal Construction 3175 Sweetwater Dr. Boise, Idaho 83716	U.S. MailFAXOvernight DeliveryHand Delivery
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11/29/96

Dougal Construction Co. 3175 Sweetwater Dr. Boise, Idaho 83716

Dougal Construction Co.

11/29/96

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MOTICE IS EEREDY GIVEN that FRANKLIN BUILDING SUFFLY CO., Cleinant berein, at the request of Monterey Boses, Inc., did on the 24th day of deptamber, 1886, begin to sell, furnish and deliver building materials and supplies to and commende labor for A residential building until the 27th day of September, 1906, which was the last day on which said natorials and supplies were so sold, furnished and delivered and labor provided, to be used for the construction, elteration and/or repair of a certain building, improvement, atructure and/or dwelling upon the following described lands mituate in ade county, Idaho, to-wit:

Let 25, in Block 5, of milverseed subdivision No. 3, seconding to the Official Plat thereof, filed in Book 71, of Plats at pages

The Duilding materials and supplies sold, furnished and delivered and the labor performed were used in the construction efteration and repair of the huilding(m) and improvements above-mentioned.

The name of the owner(s) and/or reputed owner(s) of the lands, buildings and improvements to be observed with the lien are Michael E. and Carleen Tenner. The building materials and supplies so sold, furnished and delivered and the labor provided amounted in value to the sum of \$5,114.71, plus interest, and no part of this amount has been paid, and there are no just exedits or offsets except \$0.00. There is a belance due and unpaid for such materials and supplies and labor to this Claimant over and above all just emedits and offsets, of \$3,114.71. plus interest and atterney's form and costs, for which last named sum the shows-haned Claimant claims a lien on the said building, structures, improvements and the land shows described.

day of December, 1996.

MILDING

STATE OF IDAMO County of Los

R. L. Liers, being first duly evern up officer of the above-named Claiment herein and makes this verification for and anvite behalf, that he has read the foregoing MOTICE THE CLAIM OF LIER, believes the same to be true

Residing at Boise, Idebo Hy commission expires: 11/05/97

STATE OF IMAGO County of Ada

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year in this certificate first above written.

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ADA CO. RECORDER J. DAVID NAVARRO BOISE ID

FRANKLIN BUILDING SUPPLY

'96 DEC 13

Motory Public Residing at Boise, Idaho My gommicsion expires: 11/05/97

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